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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-570

THURMAN L. DODSON,

Petitioner,

v.

THEODORE J. SCHEVE, *et al.*,

Respondent

and

FLORENCE HAWKINS,

Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	2
QUESTION PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
INTRODUCTION	5
REASON I	6
THE LEGAL THEORY UNDERLYING THE DISTRICT OF COLUMBIA STATUTE IS NO LONGER ACCEPTED BY THIS COURT	6
REASON II	10
CLEAR REQUIREMENTS SHOULD BE PLACED ON TAXING AUTHORITIES TO GIVE PROPERTY OWNERS REASONABLE NOTICE THAT THEY HAVE A RIGHT TO REDEEM THEIR PROPERTY FROM TAX SALES	10
CONCLUSION	13

TABLE OF AUTHORITIES

Cases:

Ballard v. Hunter, 204, U.S. 241 (1907)	7
Boddie v. Connecticut, 401, U.S. 371 (1970)	12
Covey v. Town of Somers, (1956) 351 U.S. 141, 100 L. Ed. 1021, 76 S. Ct. 724	11
Fuentes v. Shevin, 407 U.S. 67 (1972)	12
Garfield v. Golsky, 211 U.S. 249, 262 (1908)	11
Goldberg v. Kelly, 397, U.S. 254 (1970)	13
Joint Anti-Facist Refugee Committee v. McGrath, 341, U.S. 123, 168 (1951)	12

	Page
Langyear v. Toolan, 289 U.S. 414 (1908)	7, 8
Leigh v. Green, 193 U.S. 79 (1904)	7, 8
Milliken v. Meyer, 311 457 (1940)	10
Mullane v. Central Hanover Bank and Trust Co. 339 U.S. 306 (1949)	10
Nelson v. New York, 352, U.S. 103 (1956)	9
New York v. New York N.H. & H.R. Co. 344 U.S. 293 (1953)	9
Schroeder v. City of New York, 371, U.S. 208 (1962)	9,11
Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)	13
Winona and St. Paul Land Co. v. Minnesota 159 U.S. 526 (1859)	7

APPENDIX

1. Hawkins v. District of Columbia, Decision on Petition for Rehearing, D.C.C.A., July 14, 1975 ..... 1a
2. Hawkins v. District of Columbia, Decision on Appeal, D.C.C.A., June 2, 1975 ..... 2a
3. Hawkins v. District of Columbia and Dodson v. Scheve, Consolidated order, D.C.C.A., October 16, 1974 ..... 10a
4. Hawkins v. Scheve, et al Decision of the District of Columbia Superior Court, Decided February 11, 1974 ..... 11a
5. Dodson v. Scheve, et al, Decision of the Superior Court of the District of Columbia, Decided November 26, 1973 ..... 14a
6. 47 D.C. Code §§47-1001, 47-1001a, 47-1005 ..... 16a

IN THE

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No.

THURMAN L. DODSON,

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THEODORE J. SCHEVE, *et al.*,

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FLORENCE HAWKINS,

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v.

DISTRICT OF COLUMBIA, *et al.*,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Thurman L. Dodson and Florence Hawkins petition for a Writ of Certiorari to review the judgment of the District of Columbia Court of Appeals entered on June 31, 1975.

OPINIONS BELOW

The opinions of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia are not yet officially reported. They appear respectively in the Appendix at pages 2, 11 and 14. The order denying rehearing appears in the Appendix at p. 1.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on June 3, 1975. The District of Columbia Court of Appeals order denying petitioners' timely petition for rehearing was entered on July 14, 1975. This petition was filed within 90 days thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

STATUTE INVOLVED

The relevant portion of the D.C. Code is D.C. Code §§47-1001, 47-1001A, and 47-1005 which are set forth in the Appendix at page 16.

QUESTION PRESENTED FOR REVIEW

The District of Columbia has a statute that sets forth a summary procedure for the sale of real property on which there is delinquent taxes, and which allows the

owner of the property two years within which to redeem the property. The questions presented in this petition are: (1) Does notice by publication only meet the due process requirement where the party whose property is to be sold for delinquent taxes is a known resident whose address is known or easily ascertainable; and (2) Do due process principles require the District of Columbia to give reasonable notice to the property owner of the expiring period for redemption of the property from the tax sale.

STATEMENT OF THE CASE

The District of Columbia Court of Appeals consolidated the two appeals involved herein.

Petitioner Hawkins filed an action in the Superior Court of the District of Columbia to have a tax sale of her property set aside, alleging the unconstitutionality of the notice procedures.

Petitioner Hawkins was at the time of the acts complained of, the owner-occupier of a dwelling-house. Prior to 1969, the bill for real estate taxes assessed against the property was mailed to and paid by the holder of the first trust. In the early part of 1969 the dwelling was so damaged by fire that Petitioner Hawkins was required to leave it while repairs costing some $6500.00 were made.

Real estate taxes in the amount of $245.27 were assessed against the property for fiscal year 1970, and the tax bill was mailed to Petitioner Hawkins as owner of record of the property. After Petitioner failed to pay the tax, the property, described only by lot and square

number, was included in a delinquent tax list together with notice of sale as required by D.C. Code 1973, §47-1001, Petitioner's property was sold to the Scheves for the amount of the unpaid taxes plus penalties and costs.

The District of Columbia had a practice of sending notice of the expiration of the redemption period to property owners by registered mail shortly before the period expired. Petitioner Hawkins was sent such a letter by regular mail in an envelope that bore no postmark. The Petitioner did not receive the letter until more than fifteen days after the period had expired.

Because the property was not redeemed within the time permitted by law, the District of Columbia on March 14, 1973, conveyed the property to the Scheves as tenants by the entireties for $259.27 representing the amount of the unpaid penalties and costs.

Petitioner Dodson was the owner of a dwelling-house in the District of Columbia (Lot 35, Square 4053) which was sold by the District of Columbia to the Respondent Scheves on January 16, 1970, for unpaid taxes of $283.57. The Petitioner filed an action in the Superior Court of the District of Columbia to set aside the tax sale alleging the unconstitutionality of the notice procedure.

Real estate taxes in the amount of $283.57 were assessed against the property for the fiscal year 1970 and the tax bill was mailed to Petitioner Dodson. Petitioner Dodson failed to pay the taxes, and the property described only by lot and square number, was included in a delinquent tax list prepared by the assessor. The property was sold after publication of the delinquent tax list together with the notice of sale as required by D.C. Code 1973 §47-1001.

The District of Columbia sent the Petitioner Dodson a notice by registered mail of the expiration of the redemption period shortly before the said period expired. The return receipt was signed by an employee in Petitioner Dodson's office, but he did not get the notice.

The Superior Court of the District Court rendered judgments against both Petitioners. The separate appeals were consolidated by the District of Columbia Court of Appeals, and affirmed, (one Judge dissenting in the case of the Petitioner Hawkins). The District of Columbia Court of Appeals ruled that notice by publication was sufficient in tax sales.

For the reasons discussed below, Petitioners ask this Court to review the matter on Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

Introduction

The questions raised are of major importance because the decision below, in sanctioning tax sales with notice given only by newspaper publication where the parties in interest are known or easily ascertainable, allows property owners to lose their property without the minimal requirements for notice that this Court has heretofore required.

The Court should grant Certiorari for two reasons: (1) The District of Columbia Summary tax sale statute is based on legal theory expressed by this Court in the nineteenth and early twentieth century, but modified substantially by later decisions of this Court, that tax

foreclosure proceedings were solely in rem, and in rem proceedings require only constructive service of process to comply with due process of law. The District of Columbia summary tax sale procedure has a basic unfairness by allowing purchasers at tax sales to profit a thousand fold at the expense of the poor, the ignorant, and the less alert, by failing to provide for the minimal notice that this Court has required of comparable procedures in other areas. (2) The Decision of the Court below places no clear requirement on tax authorities to give property owners reasonable notice that they have a right to redeem their property from tax sales within prescribed time. The effect of the decision below is to restrict prior rulings of this Court that no one can be deprived of an important property right without meaningful notice that is reasonably calculated to inform.

REASON I

THE LEGAL THEORY UNDERLYING THE DISTRICT OF COLUMBIA STATUTE IS NO LONGER ACCEPTED BY THIS COURT

The statute creating the District of Columbia taxes sales with notice only by publication was enacted in 1877, and has remained essentially unchanged since that date. Acts March 3, 1877, ch. 177 §§5, 18, 19, Stat., 396, 402 (Comp. St. D.C. 1894, ch. 65, p. 526); Mar. 19, 1890; ch. 40, 26 Stat. 24. The statutes reflected the legal theory expressed by the United States Supreme Court in the Nineteenth and Early Twentieth Century

that tax foreclosure proceedings were solely in rem, and in rem proceedings require only constructive service of process to comply with due process of law. While several United States Supreme Court cases contained language broad enough to make such a doctrine apply to a resident whose name and address was known to the taxing authorities, this doctrine, interestingly enough was applied only to non-residents or to unknown property owners. The two cases in which this doctrine was applied to a resident was either dicta, or the state legislative scheme employed a system of supplemental notice in addition to publication that was reasonably calculated to give actual notice to the property owner. The pertinent United States Supreme Court cases that established this early doctrine are: *Winona & St. Paul Land Co. v. Minnesota* (1859) 159 U.S. 526, 40 L. Ed. 247, 10 S. Ct. 820; *Leigh v. Green* (1904) 193 U.S. 70, 48 L. Ed. 623, 24 S. Ct. 390; *Ballard v. Hunter* (1907) 204 U.S. 241, 51 L. Ed. 461, 27 S. Ct. 261; and *Langyear v. Toolan,* (1908) 209 U.S. 414, 52 L. Ed. 859, 28 S. Ct. 506.

The law has always provided that due process requires that the owner of land be given notice of a proceeding to foreclose a tax or similar lien on his property. The sufficiency of the notice required by due process has been the issue most frequently presented before the Court. The theory that publication alone provides sufficient notice in a tax foreclosure proceeding seems to have found its earliest support in a United States Supreme Court decision in certain dicta in the 1859 case of *Winona & St. Paul Land Co. v. Minnesota, supra.* This case involved a challenge to the validity of a Minnesota Law authorizing the imposition of a tax or

assessment upon property according to its value. The Court held that such a provision does not infringe the due process clause if the property owner had an opportunity to question the validity of the amount of the tax before it was determined or in a proceeding to collect the amount of the tax. A careful reading of the case shows that the party challenging the statute saw the notice in the newspapers to sell the property. The issue of lack of notice does not appear to have been an issue in the case. The Court indicated in what appears to be dicta that the fact that notice of delinquent tax list is a publication and not personal is not sufficient to invalidate the law. It should be noted, however, that in the era this case was decided, a notice in the newspaper may well have given actual notice to most people.

The Supreme Court held in *Leigh v. Green,* supra that publication against an unknown tax payer was sufficient in a proceeding to foreclose a tax lien. *Ballard v. Hunter,* supra, involved a challenge to the constitutionality of an Arkansas Statute that allowed publication against non-residents but required personal service on resident owners or occupants in proceedings to foreclose tax liens. The Court held that the proceedings were in rem, and that publication was sufficient notice against a non-resident. *Langyear v. Toolan,* (1968) supra., appears to be the only Supreme Court case in which it was held that newspaper publication was sufficient notice to a resident property owner in a proceeding to foreclose a tax lien. However, the Michigan statute provided a procedure in which the tax sale could be set aside within one year after the property owner got actual notice of the tax sale. Moreover, this decision was based on the assumption expressed in the earlier

case of *Winona & St. Paul Land Co. v. Minnesota* (1959) supra., that notice by publication in the newspaper was sufficient if the proceedings were in rem

This Court has modified substantially the notice requirements for actions formerly classified as "in rem."

New York v. New York, N.H. & H.R. Co., 344 U.S. 293 (1953), involved known creditors, were given notice to file claims in a proceeding to reorganize a railroad solely by publication of the notice in two once-a-week advertisements in five daily newspapers. The Court recognized that notice by publication when the addresses or interests of persons are unknown is valid but, there is no excuse when the party in interest is known or can readily be ascertained.

In *Nelson v. New York,* 352 U.S. 103 (1956), the Court held that notice by publication of a proceeding to sell property for back taxes complies with due process when supplemented by notice by registered mail. In agreement with *Nelson* is *Schroeder v. City of New York,* 371 U.S. 208 (1962). In *Schroeder,* the Plaintiff had never been notified of the condemnation proceedings against her property. The only notice of the proceeding was by newspaper publication as decreed by the pertinent statute. The Court held that since her name could have been readily ascertained from both deed records and tax rolls, the statute providing for newspaper publication did not measure up to the quality of notice which the due process clause of the fourteenth amendment required.

In the instant case, it is hard to conceive that notice by publication alone to a known resident property owner fulfills the requirement of due process of being

"meaningful" as established by *Fuentes v. Shevin*, 401 U.S. 371 (1470). Nor does it fulfill the requirement stated by the Court in *Milliken v. Meyer*, 311 456 (1940) that notice must be adequate. The Court elaborated on this requirement by stating that whether or not the notice is adequate depends on whether it is reasonably calculated to give one actual notice of the proceeding and an opportunity to be heard. See also *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949), where the Court added that the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. *Id.* at 314. In short, the pertinent statutes in this case lack the traditional notions of fair play and substantial justice. Perhaps at one time publication alone was sufficient, *i.e.*, due to the smallness of towns, however, times have changed since the enactment of Chapter 10 of Title 47 in 1877.

REASON II

CLEAR REQUIREMENTS SHOULD BE PLACED ON TAXING AUTHORITIES TO GIVE PROPERTY OWNERS REASONABLE NOTICE THAT THEY HAVE A RIGHT TO REDEEM THEIR PROPERTY FROM TAX SALES.

The District of Columbia Court of Appeals has placed no requirement on District tax authorities to give property owners reasonable notice that is calculated to inform property owners of their right to

redeem their property from tax sales. The effect of this ruling is to restrict the scope of prior rulings of this Court that no one can be deprived of an important property right without meaningful notice calculated to inform. Under the circumstances in this case, due process of law required that the Petitioner Hawkins at least be given notice both of the sale of the property and of the right to redeem in addition to constructive notice. *Nelson v. New York*, supra; *Covey v. Town of Somer*, 351 U.S. 141 (1956), 76 S. Ct. 724, 100 L.Ed. 1021. The letter by regular mail was not timely received. In entrusting the letter by regular mail to the normal channels of the post office, a less than adequate method was selected. No less than registered mail was required by due process of law as the type of feasible notice reasonably designed to inform the petitioner of the expiration of the right to redeem her property. *Schroeder v. New York*, 371 U.S. 208, 211 (1962).

There can be no question that the deprivation of one's land by a tax sale must be accomplished by a proceeding that comports with procedural due process. This contention is supported by all the tax sale cases. The difficulty with procedural due process cases is not whether it is required, but rather what is its scope.

This Court has been unwilling to allow the deprivation of a significant property interest without notice or hearing. The Supreme Court has described the scope of the due process clause in the following way:

> The right to be heard before property is taken or rights or privileges withdrawn, which have previously been legally awarded, is of the essence of due process of law.

Garfield v. Golsby, 211 U.S. 249, 262 (1908). Justice Frankfurter has stated:

> [T]he right to be heard before being condemned to suffer grievous loss of *any kind*, even though it may not invoke the stigma and hardships of a criminal conviction, is a principle basic to our society.
>
> Fairness of procedure is "due process in the primary sense."

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951) (emphasis added).

Language from *Fuentes v. Shevin*, 407 U.S. 67 (1972), and *Boddie v. Connecticut*, 401 U.S. 371 (1970), indicates that an individual must be given notice and hearing before he is deprived of any significant property interest. In *Boddie*, the Court stated:

> The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceeding. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justified postponing the hearing until after the event.

401 U.S. at 378-79.

The Court held in Fuentes that an opportunity for a hearing must be given before the state authorizes its agents to seize property in the possession of a person upon the application of another. The Court stated:

> If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.

407 U.S. at 80. Similarly, in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), it was held that a fundamental principle of procedural due process law is the right of persons deprived of property to a prior notice and hearing.

Although *Fuertes* dealt with seizure of goods bought under a conditional sales contract and *Sniadach* dealt with garnishment procedures, both are relevant to the instant case as they both dealt with vested property rights. In *Goldberg v. Kelly*, 377 U.S. 254 (1970), the Court in holding that welfare entitlement was more like "property" than a "gratuity," *see* 377 U.S. at 262 n. 8, recognized that much of the existing wealth in the country lies outside the traditional forms of the common law concept of property.

Hence, the principles established by the Court in *Fuentes* were as follows:

> Parties whose rights are to be affected are entitled to be heard: and in order that they may enjoy that right they must first be notified.
>
> It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."

Id. at 80.

CONCLUSION

For these reasons, the Court should grant the petition.

Respectfully submitted,

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APPENDIX

In The District of Columbia Court of Appeals
No. 8321

FLORENCE HAWKINS,
Appellant,

CA-5225-73

versus

DISTRICT OF COLUMBIA, ET AL.,
Appellee.

Before REILLY, Chief Judge, KELLY, FICKLING, KERN, GALLAGHER, NEBEKER, YEAGLEY and HARRIS, Associate Judges, and PAIR, Associate Judge, Retired.

ORDER

On consideration of appellant's petition for rehearing *en banc* and it appearing that no judge of this Court has called for a vote thereon,

IT IS ORDERED that appellant's petition is denied.

PER CURIAM

Filed July 14, 1975

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 8039

THURMAN L. DODSON, APPELLANT,

v.

THEODORE J. SCHEVE, GERALDINE E. SCHEVE, and DISTRICT OF COLUMBIA, APPELLEES.

No. 8321

FLORENCE HAWKINS, APPELLANT,

v.

DISTRICT OF COLUMBIA, THEODORE J. SCHEVE, and GERALDINE E. SCHEVE, APPELLEES.

Appeals from the Superior Court of the District of Columbia, Civil Division.

BEFORE: Kern and Nebeker, Associate Judges, and Pair, Associate Judge, Retired, concurring in part and dissenting in part.

JUDGMENT

Both appellants were owners of real property in the District of Columbia, which properties were deeded by the District to Mr. and Mrs. Scheve subsequent to the failure of appellants to redeem these properties after in-

curring tax arrearages. At trial, appellants sought to set aside these deeds from the District to the Scheves and to clear title to their respective property. Their actions were based on the claim that the notice provisions of D.C. Code 1973, §§ 47-1001 and 47-1001(a), were not reasonably calculated to notify them that they were in danger of losing title to their properties, and, accordingly, that the conveyance from the District to the Scheves constituted a taking without due process. In both cases appellants conceded that the District had complied with the above statutory notice requirements.[1] On the records before us we need not, and therefore should not,[2] address this constitutional issue[3] since we affirm the trial judges' findings that in each case the appellant was in fact effectively notified of the pending conveyance of the property.

[1] Mrs. Hawkins urges that she was entitled to personal service or service by registered mail pursuant to D.C. Code 1973, § 47-903, since she was the occupant of a family dwelling. Section 47-905 clearly provides, however, that such service is required only after a taxpayer first files an affidavit establishing his status as an occupant of a family dwelling. Mrs. Hawkins made no showing of such a filing. Because of our disposition of the case, we need not address her contention that in order to comply with the legislative purpose behind § 47-903 the District is required to notify taxpayers (by means in addition to the Code) of the opportunity provided in § 47-905 to file an affidavit.

[2] *See Bush v. Texas*, 372 U.S. 586, 590 (1963); *Powell v. Washington Metropolitan Area Transit Comm'n*, 151 U.S. App.D.C. 295, 466 F.2d 466 (1972).

[3] It is an argument of dubious validity under all the circumstances attendant to the collection of funds for the public treasury, ownership of realty, the universal knowledge of dire consequences for nonpayment of taxes, and the existence of a substantial period of redemption.

In Dodson's case, the court found that Mr. Dodson, an attorney, had been delinquent 14 times within recent years in the payment of his real estate taxes, but that he had always managed (except on the instant occasion) to pay his tax bill in time to avoid the loss of his property. The court also found that the District did mail to him a final notice of delinquency announcing that further nonpayment would result in sale, although Dodson denied receiving that letter. The court further found that the District (according to apparent administrative custom, although not statutorily required) had sent a letter to Mr. Dodson by certified or registered mail notifying him that his redemption period was soon to expire. Receipt of that letter was acknowledged by one Maureen Brent, an employee in the building where Dodson worked. Although he customarily had his mail delivered by her, Mr. Dodson denied the actual receipt of that letter. The fact that under these circumstances Mr. Dodson claims no actual notice does not prove that the efforts of the District to notify him were insufficient. As the Court stated in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), notice satisfies due process requirements if it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We affirm the trial court's holding that the District's efforts to notify Mr. Dodson were here so calculated. *Cf. Nelson v. New York*, 352 U.S. 103 (1956).

In Mrs. Hawkins' case, appellant conceded receipt of a letter advising her that her opportunity to redeem was about to expire. She claimed, however, that by the time she received this letter (March 19, 1973) the District had already deeded the property to the Scheves (March

14, 1973). The letter was dated December 1, 1972, and a witness for the District stated that according to custom it "should have been mailed on December 1, 1972," although this particular letter bore no date stamp which normally is printed on such mail by the Department of Finance and Revenue. *See United States v. Chemical Foundation*, 272 U.S. 1 (1926).

It is apparent from the trial court's ruling that it rejected the testimony of appellant Hawkins that she did not receive the District's letter prior to conveyance of her property at the expiration of her redemption period. The court also found, as in the case of Mr. Dodson, that the District had mailed to her a final notice of delinquency prior to sale. Thus, the record can fairly be read to support a finding of actual notice of the sale and the expiring redemption period. In this connection, the trial judge also observed that on several previous occasions Mrs. Hawkins had successfully redeemed her property after falling into arrears on her taxes, leading him to state that "the lady is most proficient, in my view, so far as the knowledge of the procedure is concerned." The court, therefore, found that "she had a knowledge of the debt and she had a knowledge of what the remedy [*i.e.*, the District's sale remedy] was."

We hold that the respective records support the trial judges' findings that both Mr. Dodson and Mrs. Hawkins were sufficiently notified of the forthcoming conveyance of their respective property due to a tax delinquency.

ACCORDINGLY, it is this 2nd day of June 1975,

ORDERED and ADJUDGED that the judgments in favor of the appellees, the Scheves and the District of Columbia, be, and hereby are, affirmed.

PER CURIAM.

PAIR, *Associate Judge, Retired,* concurring in part and dissenting in part: I am constrained to concur in the result reached in *Dodson v. Scheve, et al.*, because there is a record showing that Mr. Dodson was given notice by registered mail before his property was sold for non-payment of taxes. I cannot concur in the result reached in *Hawkins v. D.C., et al.*, and therefore dissent.

Appellant Hawkins was at the time of the acts complained of the owner-occupier of a dwelling-house. It appears that prior to 1969, the bill for real estate taxes assessed against the property was mailed to and paid by the holder of the first trust. In the early part of 1969 the dwelling was so damaged by fire that appellant was required to leave it while repairs costing some $6500.00 were made.

Real estate taxes in the amount of $245.27 were assessed against the property for Fiscal Year 1970, and the tax bill was mailed to appellant Hawkins as owner of record of the property. Appellant failed to pay the taxes and her property, described only by lot and square number, was included in a delinquent tax list prepared by the assessor. After publication of the delinquent tax list together with notice of sale as required by D.C. Code 1973, § 47-1001, appellant's property was sold to the Scheves for the amount of the unpaid taxes plus penalties and costs. Because the property was not redeemed within the time permitted by law, the District of Columbia on March 14, 1973, conveyed the property to the Scheves as tenants by the entireties for $259.27 representing the amount of the unpaid taxes, penalties, and costs.

Even if appellant was afforded the proper statutory protection before the tax sale of her property, it seems to me that the District of Columbia owed her a duty to

give proper notice of the expiring period for redemption before conveying the property by tax deed to the Scheves. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), where the Court said:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . [Citations omitted.]

See also and *compare Miles v. District of Columbia, et al.*, —— F.2d —— (D.C. Cir., No. 73-2250, March 21, 1975).

There is, of course, a record showing that the District did address a letter to appellant advising her that the period within which she was permitted to redeem her property was about to expire. However, appellant insists that the letter was not received until more than 15 days after the period had expired, and it is undisputed that the envelope in which the letter was enclosed had no postmark. Under the circumstances I refuse to indulge a presumption that the letter was ever mailed. In any event, it appears to have been the practice of the District to send such a notice by registered mail because in the companion case of *Dodson v. Scheve, et al.*, notice by registered mail was given.

But aside from all of this, Congress has made owner-occupiers of dwellings in the District of Columbia the subject of special concern. Thus, in D.C. Code 1973, § 47-903, it is provided:

> No family dwelling-house occupied by the owner thereof shall be sold for delinquent . . . real-estate taxes . . . unless notice has been per-

> sonally served upon such owner or sent by registered mail, addressed to him at such dwelling-house, not less than thirty days prior to the date of such sale.

By D.C. Code 1973, § 47-905, Congress provided further that:

> This chapter shall be deemed as applying only to such occupant and owner as shall have filed with the assessor of the District of Columbia an affidavit as to domicile and ownership. *The form of the affidavit shall be prepared by the assessor of the District of Columbia*, and shall show the beginning of domicile, the time when ownership began, the street number, the number of the square and lot, and all trusts, if any, against the property. [Emphasis added.]

It is a matter of general knowledge that the District of Columbia has formulated elaborate procedures for the collection of delinquent taxes and in the process has set forth on the face and back of tax bills varied tax information, although there was no statutory obligation to do so. Significantly enough, no notice has been given by the District, in fine print or otherwise, that the owner-occupier of a dwelling, upon filing an affidavit on a form prepared by the assessor, would be entitled to thirty days' notice by registered mail before his property was sold for delinquent taxes. *See* D.C. Code 1973, § 1-1504 (d)(5). The District of Columbia insists that it did all that the law required, and it is true that every person is presumed to know the law. However, I perceive basic unfairness in the system which on the one hand frustrates, in effect, the will of the Congress as expressed in D.C. Code 1973, § 47-903, and on the other gives aid and comfort to those who are permitted to profit a thousand-

fold at the expense of the poor, the ignorant and the less alert.

I would reverse the judgment in *Hawkins v. D.C., et al.*, and remand with directions to set aside the tax deed and afford the appellant an opportunity to redeem, within a reasonable time, her property by paying the amount of the delinquent taxes plus costs, penalties, and interest.

In The District Of Columbia Court Of Appeals

Nos. 8039 and 8321

THURMAN L. DODSON, (8039), No. 3328-72
FLORENCE HAWKINS, (8321), No. 5225-73

Appellants,

versus

THEODORE J. SCHEVE,
and
GERALDINE E. SCHEVE,
and
DISTRICT OF COLUMBIA,

Appellees.

ORDER

It appearing that the above cases present similar issues and the parties are represented by the same counsel,

IT IS ORDERED, *sua sponte*, that the above cases are hereby consolidated.

FOR THE COURT:

GERARD D. REILLY,
Chief Judge.

Filed October 16, 1974

IN THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

CIVIL DIVISION

FLORENCE HAWKINS	)	
Plaintiff	)	
	)	
vs	)	Civil Action No.
	)	
THEODORE J. SCHEVE, et al	)	
	)	
Defendants	)	

JUDGMENT RATIFYING AND CONFIRMING TAX DEED

This cause came on to be heard this 4th day of February, 1974, upon the pleadings filed herein, and the evidence adduced the Court has made the following:

FINDINGS OF FACT

1. That the defendant the District of Columbia on January 16, 1970, sold to the defendants Theodore J. Scheve and Geraldine E. Scheve the fiscal year 1970 real estate taxes for Lot 802 in Square 810, for the sum of $254.47, said sum being sufficient to satisfy the taxes on said lot and square for said year.

2. Plaintiff Florence Hawkins permitted this real property to be sold for delinquent Real Estate Taxes seven times since 1952. In each case plaintiff redeemed property except for 1970, 1971 and 1972.

3. The notice given by defendant District of Columbia to plaintiff in this case was adequate, effective and in compliance with existing statutes. The realty was properly and adequately advertised in Washington Daily News on 12-12-70 and 12-19-70, and in The Evening Star on 12-15-70, 12-16-70, 12-22-70, 12-23-70, and in The Washington Post on 12-15-70, 12-16-70 and twice on 12-23-70.

4. That the defendant District of Columbia, acting through its duly authorized representative on March 14, 1973, executed a tax deed to the defendants Theodore J. Scheve and Geraldine E. Scheve which tax deed was duly recorded among the land records of the District of Columbia in Book No. 13462 at page 453 on March 16, 1973.

CONCLUSIONS OF LAW

The Court, based on the foregoing Findings of Facts, concludes as a matter of law:

1. That the delivery of the aforesaid deed was done in accordance with the applicable provisions of law and is regular in all respects.

2. That there was no violation of due process since there was adequate notice.

JUDGMENT

WHEREFORE, it is by this Court this 11th day of February, 1974,

ORDERED, ADJUDGED and DECREED:

1. That the tax deed for realty Lot 802 in Square 810 improved by premises 635 Fourth Street, N.E., Washington, District of Columbia, is herewith confirmed and ratified, and

2. That said deed is declared to be a deed in fee simple absolute, expunging all prior rights and title of others in the aforesaid realty, including all rights and title of plaintiff Florence Hawkins.

3. That the plaintiff's claim is dismissed.

4. That the defendants Theodore J. Scheve and Geraldine E. Scheve counterclaim is denied as to monetary damages only.

/s/John J. Malloy
J U D G E

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

CIVIL DIVISION

THURMAN L. DODSON,	)	
Plaintiff,	)	
v	)	Civil Action No.
	)	3328-72
THEODORE J. SCHEVE, et al.,	)	
Defendants.	)	

JUDGMENT

This cause having come on for trial before the Court and without a jury and the Court having orally entered its findings of fact and conclusions of law on the record, it is by the Court this 26th day of November, 1973,

ORDERED, ADJUDGED AND DECREED that judgment be and the same hereby is entered in favor of defendants and against plaintiff dismissing this action on the merits with prejudice; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff take nothing from this action; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and the same hereby is entered for defendants and counterclaimants Theodore J. Scheve and Geraldine E. Sheve on their counterclaim and that the tax deed for Lot 35, Square 4053

improved by the premises 1700 Montello Avenue, N.E., Washington, D. C. be and the same is hereby confirmed and ratified; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that said deed be and is hereby is declared to be a deed in fee simple absolute expunging all prior rights and title of others in said Lot 35, Square 4053 including all rights and title of plaintiff Thurman L. Dodson.

/s/Joseph M. Hannon
JOSEPH M. HANNON
JUDGE

DISTRICT OF COLUMBIA CODE, TITLE 47

§ 47-1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the District of Columbia Council shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further*, That competitive proposals shall be invited by the Commissioner of the District of Columbia from the several newspapers published in the District of Columbia for publishing the said delinquent tax list. If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Commissioner of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description.

§ 47-1001a. Notice to record owner of amount of tax levy.

Annually and subsequent to July 1, the assessor of the District of Columbia shall mail to the record owner of each lot or parcel of land upon which a real estate tax has been levied by the District of Columbia as of July 1 of the same year, a notice of the amount of such real estate tax, and of the manner in which the amount of such real estate tax is payable according to law; and such notice shall state whether there were any delinquent real estate taxes unpaid on July 1 of the year in which such notice is sent: *Provided*, That if the address of the owner be unknown, such notice shall be mailed to his agent, if known; and if there be more than one record owner of any lot or parcel, notice mailed to one of the owners shall be deemed compliance with this section: *Provided further*, That nothing in this section shall affect in any way the provisions of section 47-1103: *Provided further*, That failure of the property owner or his agent to receive such notice shall not relieve the property owner of the payment of any penalty or interest as required by law for the delinquent payment of real estate taxes.

§ 47-1005. Property sold for taxes redeemable within 2 years from sale.

The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within two years after the last day of sale by paying to the collector of taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of twelve per centum per annum after the date of such certificate of sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 4; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(4).)

Supreme Court, U. S.
FILED
JAN 9 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-570

THURMAN L. DODSON,
Petitioner,

v.

THEODORE J. SCHEVE, *et al.*,
Respondent,

and

FLORENCE HAWKINS,
Petitioner,

v.

DISTRICT OF COLUMBIA, *et al.*,
Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF OF RESPONDENTS THEODORE J. SCHEVE & GERALDINE E. SCHEVE

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	2
ARGUMENT	5
The Petition Fails to Raise a Substantial Federal Question and Should be Denied	5
CONCLUSION	8

TABLE OF AUTHORITIES

Cases:

Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 240-241, 57 S.Ct. 461, 81 L.Ed. 889 (1937), reh. den., 300 U.S. 687, 57 S.Ct. 667, 81 L.Ed. 889 (1937)	5
Balthazar v. Mari, Ltd., 301 F.Supp. 103 (N.D. Ill. 1969), *aff'd per curium*, 396 U.S. 114, 90 S.Ct. 397, 24 L.Ed.2d 307 (1969)	6
Botens v. Aronauer, 32 N.Y. 2d 243, 298 N.E. 2d 73 (Ct. App. NY 1973), *appeal dismissed*, 414 U.S. 1059, 94 S.Ct. 562, 38 L.Ed. 2d 464 (1973)	6
Castillo v. McConnico, 168 U.S. 674, 18 S.Ct. 229, 42 L.Ed. 622 (1898)	5

Page

Catoor v. Blair,
358 F.Supp. 815 (N.D. Ill. 1973), *aff'd per curium,* 414 U.S. 990, 94 S.Ct. 345, 39 L.Ed. 2d 231, *reh. den.,* 414 U.S. 1172, 94 S.Ct. 934, 39 L.Ed. 2d 121 (1973) 6

Hannah v. Larche,
363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960) . . . 7

Longyear v. Toolan,
209 U.S. 414, 28 S.Ct. 506, 52 L.Ed. 859 (1908) 6

City of Auburn v. Mandarelli,
320 A.2d 22 (S.Ct. Mne. 1974), *appeal dismissed,* 419 U.S. 810, 95 S.Ct. 25, 42 L.Ed. 2d 37 (1974) 6

Nelson v. New York,
352 U.S. 103, 77 S.Ct. 195, 1 L.Ed. 2d 171 (1956) . . . 6

Ontario Land Co. v. Yordy,
212 U.S. 152, 29 S.Ct. 278, 53 L.Ed. 449 (1909) 6

Peters v. Hobby,
349 U.S. 331, 75 S.Ct. 790, 99 L.Ed. 1129 (1955) . . . 5

Winona & St. Paul Land Co. v. Minnesota,
159 U.S. 526, 16 S.Ct. 83, 40 L.Ed. 1021 (1895) 5

IN THE

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OCTOBER TERM, 1975

No.

THURMAN L. DODSON,
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THEODORE J. SCHEVE, *et al.,*
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FLORENCE HAWKINS,
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v.

DISTRICT OF COLUMBIA, *et al.,*
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF OF RESPONDENTS THEODORE J. SCHEVE & GERALDINE E. SCHEVE

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals, affirming the opinions of the trial courts, has been officially reported at 339 A.2d 39 (1974). The Order of the District of Columbia Court of Appeals denying the petition for rehearing *en banc* has not been officially reported but appears in appendix of petitioners' brief.

JURISDICTION

Respondent does not question the statement of jurisdiction set forth in the petition.

QUESTIONS PRESENTED

Petitioners' brief misstates the nature of the legal issue properly before this Court for review. Based upon the findings of fact of the trial courts, the issue presented by this case is:

> (1) whether a substantial federal question is presented where Petitioners assert that their real property was conveyed by the District of Columbia in compliance with statutory authority, following tax deed proceedings of which Petitioners were provided with "effective notice"?

STATEMENT OF THE CASE

The statement of the case in Petitioners' Brief was prepared in disregard for certain critical and central facts found by the trial courts and affirmed by the District of Columbia Court of Appeals as set forth in its opinion.

On appeal, the District of Columbia Court of Appeals correctly held to be non-justiciable the petitioners' challenges to the due process sufficiency of the District of Columbia tax deed proceedings:

> At trial, appellants sought to set aside these deeds from the District to the Scheves and to clear title to their respective property. Their actions were based on the claim that the notice provisions of D.C. Code 1973, §§ 47-1001

> and 47-1001(a), were not reasonably calculated to notify them that they were in danger of losing title to their properties, and, accordingly, that the conveyance from the District to the Scheves constituted a taking without due process. In both cases appellants conceded that the District had complied with the above statutory notice requirements. *On the records before us we need not, and therefore should not,*[2] *address this constitutional issue*[3] *since we affirm the trial judges' findings that in each case the appellant was in fact effectively notified of the pending conveyance of the property.*

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[2] *See Buch v. Texas,* 372 U.S. 586, 590 (1963); *Powell v. Washington Metropolitan Area Transit Comm'n,* 151 U.S. App. D.C. 295, 466 F.2d 466 (1972).

[3] It is an argument of dubious validity under all the circumstances attendant to the collection of funds for the public treasury, ownership of realty, the universal knowledge of dire consequences for nonpayment of taxes, and the existence of a substantial period of redemption.

Dodson v. Scheve, 339 A.2d 39, 40 (D.C. Ct. App. 1975) (Footnote omitted; emphasis supplied).

With regard to the notice provided to petitioner Dodson of the pending tax deed proceedings, the District of Columbia Court of Appeals found that respondent District of Columbia, in addition to the required forms of notice, mailed to petitioner Dodson at his place of business a certified mail letter advising him of the expiring redemption period. This letter, not statutorily required, was sent as a courtesy by respondent District of Columbia and was received

for petitioner Dodson by an employee in the building wherein he maintained his law offices whose function it was to receive and distribute mail. Dodson denied receipt of said letter, but no finding of fact was made upon this point. Instead, the trial court held and the District of Columbia Court of Appeals affirmed that irrespective of petitioner's receipt of said letter, the District of Columbia, by sending the letter and by complying with the statutory provisions for notice had undertaken measures reasonably calculated to notify petitioner of the pending proceedings and that petioner had been accorded effective notice.

With regard to notice provided to petitioner Hawkins of the pending tax deed proceedings, the District of Columbia Court of Appeals summarized and affirmed the findings of the trial court as follows:

> It is apparent from the trial court's ruling that it rejected the testimony of appellant Hawkins that she did not receive the District's letter prior to conveyance of her property at the expiration of her redemption period. The court also found, as in the case of Mr. Dodson, that the District had mailed to her a final notice of delinquency prior to sale. *Thus, the record can fairly be read to support a finding of actual notice of the sale and the expiring redemption period. Dodson v. Scheve,* 339 A.2d 39, 41 (D.C. Ct. App. 1975) (emphasis supplied)

Respondents Scheve concur in the statement by petitioners in their Brief that respondent District of Columbia fully complied with the requirements of the District of Columbia Code regarding notice to petitioners of proceedings against their real property for non-payment of taxes.

ARGUMENT

THE PETITION FAILS TO RAISE A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DENIED:

The issues pressed upon this Court by Petitioners are too theoretical and hypothetical for determination. *See, Aetna Life Insurance Co. v. Haworth,* 300 U.S. 227, 240-241, 57 S.Ct. 461, 81 L.Ed. 889 (1937), *reh. den.,* 300 U.S. 687, 57 S.Ct. 667, 81 L.Ed. 889 (1937). A comparison of the issues presented with the facts as found by the trial courts in the actions below and affirmed on appeal, reveals a disparity so great as to render non-justiciable the issues presented herein by petitioners.[1] This Court has often deferred deciding constitutional questions in advance of the necessity of deciding same. *Peters v. Hobby,* 349 U.S. 331, 339-340, 75 S.Ct. 790, 99 L.Ed. 1129 (1955).

Even assuming, *arguendo,* that the issues raised by Petitioners are suitably framed for resolution, they nonetheless fail to present a substantial federal question. This Court has uniformly upheld the constitutionality of state and municipal statutes regulating tax deed proceedings in the face of due process challenges;[2] these statutes have

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1 As more particularly set forth in Respondents' Statement of Case, *supra,* the trial courts found and as fact and the appellate court affirmed that each petitioner received "effective notice" of tax deed proceedings pending against their respective real property, and that petitioner Hawkins received "actual notice' of said proceedings.

2 *See,* e.g., *Winona & St. Paul Land Co. v. Minnesota,* 159 U.S. 526, 16 S. Ct. 83, 40 L.Ed. 1021 (1895); *Castillo v. McConnico,*

(continued)

uniformly provided for notice of the pending proceedings to interested parties in a manner no more calculated to advise them of said proceedings than the provisions of the District of Columbia statutes challenged herein.[3] Furthermore, the claim of petitioner Dodson upon its facts is controlled by the decision of this Court in *Nelson v. New York, supra.* The claim of petitioner Hawkins, the recipient of actual notice, can only fairly be held to present a substantial federal question if this Court is prepared to rule that delinquent taxpayers in tax deed proceedings are entitled to continuing and repeated actual notice of the proceedings and/or that that tax deed proceedings where actual notice is provided delinquent taxpayers nonetheless constitute a taking of property without due process of law. Since both of these propositions are absurd on their face, it is submitted that the claim of petitioner Hawkins does not present a substantial federal question for this Court's determination.

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[2] (continued)
168 U.S. 674, 18 S.Ct. 229, 42 L.Ed. 622 (1898); *Longyear v. Toolan,* 209 U.S. 414, 28 S.Ct. 506, 52 L.Ed. 859 (1908); *Ontario Land Co. v. Yordy,* 212 U.S. 152, 29 S.Ct. 278, 53 L.Ed. 449 (1909); *Nelson v. New York,* 352 U.S. 103, 77 S.Ct. 195, 1 L.Ed. 2d 171 (1956); *Balthazar v. Mari, Ltd.,* 301 F. Supp. 103 (N.D. Ill. 1969), *aff'd. per curium,* 396 U.S. 114, 90 S.Ct. 397, 24 L.Ed. 2d 307 (1969); *Catoor v. Blair,* 358 F. Supp. 815 (N.D. Ill. 1973), *aff'd. per curium,* 414 U.S. 990, 94 S.Ct. 345, 39 L.Ed. 2d 231, *reh. den.,* 414 U.S. 1172, 94 S.Ct. 934, 39 L.Ed. 2d 121 (1973); *Botens v. Aronauer,* 32 N.Y. 2d 243, 298 N.E. 2d 73 (Ct. App. NY 1973), *appeal dismissed,* 414 U.S. 1059, 94 S.Ct. 562, 38 L.Ed. 2d 464 (1973); *City of Auburn v. Mandarelli,* 320 A.2d 22 (S.Ct. Mne. 1974), *appeal dismissed,* 419 U.S. 810, 95 S.Ct. 25, 42 L.Ed. 2d 37 (1974).

[3] *Id.*

Finally, due process requirements vary with the nature of the proceeding involved and the nature of the rights affected[4]; accordingly, the references by Petitioners to decisions of this Court dealing with, for example, pre-judgment attachment are clearly not in point and not relevant in determinations by this Court of due process sufficiency of notice provisions in tax deed proceedings.

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[4] This Court has described due process, generally, as embodying "the differing rules of fair play, which through the years, have become associated with differing types of proceedings." *Hannah v. Larche,* 363 U.S. 420, 442, 80 S.Ct. 1502, 4 L.Ed. 2d 1307 (1960).

CONCLUSION

It is respectfully submitted that petitioners have wholly failed to sustain their burden of establishing, pursuant to Rule 19, that the District of Columbia Court of Appeals in deciding the appeal before it, decided any substantial federal question in a manner not in accord with prior holdings of this Court or that the District of Columbia Court of Appeals decided any federal question of substance which has not heretofore been decided by this Court. The District of Columbia Court of Appeals correctly refrained, on ground of lack of justiciable case or controversy, from determining the purported issue here presented by petitioners to this Court.

Respectfully submitted,

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On Brief